

October 23, 2002

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VIA HAND-DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: FEC Complaint - MUR 5299

Dear Mr. General Counsel:

This letter is in response to the FEC Complaint filed by the Democratic Party of Oregon (the "Complaint") against Gordon Smith for US Senate 2002, Inc.; Gordon Smith for US Senate; Cary Evans; and Greg Niedermeyer as treasurer (the "Respondents"). The Commission granted the Respondents a twenty-day extension of time to file this answer until October 23, 2002.

The Complaint alleges two violations: (1) Senator Gordon Smith improperly secured a credit line for his 1996 US Senate campaign, and (2) he secured the credit line at an improperly low interest rate. The Complaint clearly states the alleged violations occurred on October 31, 1995.

The Oregon Democratic Party submitted the Complaint on September 3, 2002. This means that a full six years and ten months have elapsed between the date the alleged violations publicly occurred and the date the Democratic Party of Oregon chose to file a Complaint. The Commission is accustomed to receiving last minute press-oriented complaints, filed within days of an election by trailing candidates, in a last ditch effort to revive their campaign. This Complaint however, is beyond the pale by trying to resurrect stale events that occurred almost seven years ago.¹

The Commission should not reward the Oregon Democratic Party's manipulation of your system. The alleged violations occurred more than five years ago. The omnibus federal five-year statute of limitations found in 28 U.S.C. § 2462 applies to proceedings under the Federal Election Campaign Act ("FECA"). See *FEC v. NRSC*, 877 F. Supp. 15 (D.D.C. 1995) (action brought seven years after alleged violations was time barred); *FEC v. National Right to Work Committee*, 916 F. Supp. 10 (D.D.C. 1996) (action brought six years after alleged violations was time barred); *FEC v. Williams*, 104 F.3d 237 (9th Cir. 1996).

In *NRSC*, the alleged violations occurred in November 1986. The Commission did not file suit seeking penalty until April 1993. The court held that the omnibus federal five-year statute of limitations applied to FECA enforcement. After finding that the statute of limitations started to

¹ In fact, the credit lines have long been re-paid or renegotiated.

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run on the date the alleged violation occurred, the court dismissed the penalty action for failure to file within five years of the alleged violation.

The limitations period on this alleged violation began to run as of October 31, 1995. *See 3M Co. v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994) (limitations period begins when the alleged offense was committed). The committee listed the credit line in reports filed with the Commission at that time.

It is clear that the Commission is unable to impose any sort of penalty based on the Complaint. The only action the Commission should take regarding the Complaint is to dismiss it under 2 U.S.C. § 437g(a)(1).

Based on the foregoing we respectfully ask the Commission to dismiss this matter and close the file.

Best Regards,



Craig Engle
Scott Ward

cc: Gordon Smith for US Senate
Cary Evans
Lisa Lisker

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